

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2011-365-C - ORDER NO. 2011-\_\_-C

DECEMBER 7, 2011

IN RE:	Application of Liberty-Bell Telecom, LLC	)	ORDER GRANTING
	dba DISH Network Phone & Internet for a	)	CERTIFICATE AND
	Certificate of Public Convenience and	)	APPROVING
	Necessity to Provide Competitive	)	ALTERNATIVE
	Interexchange and Local Exchange	)	REGULATION AND
	Telecommunications Services Throughout the	)	FLEXIBLE
	State of South Carolina and for Alternative	)	REGULATION
	Regulation of its Interexchange Offerings and	)	
	for Flexible Regulation of its Local Exchange	)	
	Offerings	)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet (the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold and facilities-based local exchange and interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2010) and the rules and regulations of the Commission. By its Application, the Company also requests flexible regulation of its local exchange service offerings pursuant to Order No. 98-165 in Docket No. 1997-467-C, alternative regulation of its business interexchange services consistent with Commission Orders, and waiver of certain Commission regulations.

The Commission’s Docketing Department instructed the Company to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state

affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of the Company and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was filed by the South Carolina Telephone Coalition (“SCTC”). Subsequent to the intervention, the Company and SCTC reached a Stipulation, attached hereto as Order Exhibit 1.

A hearing was convened on November 28, 2011, at 2:30 p.m. in the offices of the Commission in Columbia, South Carolina, before F. David Butler, Hearing Examiner. The Company was represented by John J. Pringle, Esquire. The Office of Regulatory Staff (“ORS”) was represented by C. Lessie Hammonds, Esquire. The South Carolina Telephone Coalition did not appear at the hearing.

Nigel Alexander, President and CEO for the Company, testified in support of the Company’s Application. The record reveals that the Company is a limited liability company (LLC) organized under the laws of the State of Colorado and that it is registered to transact business in South Carolina as a foreign LLC. According to Mr. Alexander, the Company seeks authority as a facilities-based provider and reseller of local services and interexchange services. Mr. Alexander explained the Company’s request for authority, and the record further reveals the Company’s services, operations, and marketing procedures. The Company intends to primarily offer services to residential and small business customers. Mr. Alexander also discussed the Company’s technical, financial, and managerial resources to provide the services for which it seeks authority. Mr.

Alexander offered that the Company possesses sufficient financial resources to support its operations in South Carolina.

With regard to management and technical capabilities, the Company's Application and Mr. Alexander's testimony both evidence that its management has extensive experience in telecommunications, information technology, regulatory matters, and accounting and finance. Mr. Alexander also testified that the Company will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. Mr. Alexander offered that approval of the Company's Application would serve the public interest.

Mr. Alexander, on behalf of the Company, requests a waiver of 26 S.C. Code Ann. Regs. 103-610, since the Company's books are maintained in Colorado. Further, the Company requests an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts ("USOA"). The Company maintains its books in accordance with Generally Accepted Accounting Principles ("GAAP"). In addition, the Company requests a waiver of 26 S.C. Reg. 103-607, Bonds or Other Security Mechanisms. After consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. The Company is incorporated as an LLC under the laws of the State of Colorado, and is authorized to do business as a foreign LLC in South Carolina by the Secretary of State.

2. The Company desires to operate as a provider of facilities-based and resold local and interexchange services in South Carolina.

3. We find that the Company possesses the managerial experience and capability to operate as a provider, on a facilities-basis and through resale, of local services and interexchange services in South Carolina.

4. We find, based on the financial statements submitted by the Company and the testimony at the hearing, that the Company possesses sufficient financial resources to provide the services as described in its Application and testimony.

5. We find that the issuance of a Certificate of Public Convenience and Necessity to the Company to operate on a facilities basis and as a reseller of local exchange telecommunications and interexchange services in South Carolina would be in the best interest of the citizens of South Carolina by providing more innovative services.

6. The Company requests a waiver of 26 S.C. Code Ann. Regs. 103-610. The Commission finds the Company's requested waiver reasonable and understands the potential difficulty presented to the Company should the waiver not be granted. Further, we find that a waiver of 26 S.C. Code Ann. Regs. 103-610 is not contrary to the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable.

7. Additionally we find that a waiver of 26 S.C. Code Ann. Regs. 103-607, Bonds or Other Security Mechanisms, is appropriate and not contrary to the public interest. Accordingly, we will not require the Company to post a bond or other security mechanism in connection with its provision of residential local exchange services. As set

out in 26 S.C. Code Ann. Regs. 103-607, “[t]he commission may waive this requirement . . . if the telephone utility provides evidence of financial stability as deemed appropriate by the Commission.” The financial statements submitted by the Company demonstrate the financial stability sufficient to support the grant of a Certificate of Public Convenience and Necessity. Additionally, Mr. Alexander testified that the Company has received a sizeable investment from, and the financial assurance of, its eventual parent company DISH Network Corporation (“DISH Network”). The record reveals that DISH Network reported total revenue in 2010 of \$12.64 billion. The Commission finds that these factors taken together demonstrate sufficient evidence of the Company’s financial stability.

**ORS’s position regarding request for waiver of bond in 2011-365-C (Liberty Bell d/b/a DISH)**

Applicant requested a waiver of “26 S.C. Reg. 103-607, Regulation Governing Telephone Utilities Offering Regulated Prepaid Local Exchange Services and Bonds or Other Security Mechanisms” (Application page 9). However, the referenced regulation was amended in the South Carolina State Register published by the Legislative Council of the General Assembly on June 24, 2011 (Volume 35 Issue No. 6) to read “Bonds or Other Security Measures”. 26 S.C. Reg. 103-607, as amended, “...applies to telephone utilities who provide retail residential local exchange services and who individually or together with their affiliates, have not invested at least five million dollars in telecommunications facilities in the State of South Carolina.”

The applicant clearly meets the criterion put forth in the regulation. The applicant is a telephone utility who requests to provide retail residential local exchange services. The applicant has not invested at least five million dollars in telecommunications facilities in the State of South Carolina. More specifically, the witness for the applicant testified at the hearing that the applicant has no intentions to build (invest) any network (facilities) in the State of South Carolina. Therefore, it is apparent that this applicant should be required to post a bond as outlined in the governing regulation.

The regulation does provide language in which a waiver would be allowed. Specifically, the regulation states, “The commission may waive this requirement upon petition by the telephone utility if the telephone utility provides evidence of financial stability as deemed appropriate by the commission.” However, the Commission does not consider a waiver of this requirement to be appropriate in this matter.

Notwithstanding the applicant's demonstration of financial resources, this does not adequately ensure the company will not abruptly cease providing services to its South Carolina consumers. This is precisely the purpose of the amended regulation, to attempt to protect consumers against the consumers' financial loss in the event a telephone utility abruptly ceases services.

Furthermore, posting the required bond should not be overly burdensome to the applicant. Witness for the applicant testified that DISH reported total revenue in 2010 of over \$12 billion and that DISH will "back" the applicant.<sup>1</sup> Therefore, the applicant should be financially capable of posting a bond. However, it is not clear to the Commission that DISH is actually legally responsible to "back" the applicant.<sup>2</sup>

Finally, it is contrary to the public interest to allow a waiver of this regulation in this matter. This applicant clearly meets the criterion identified by the amended regulation and the purpose of the amended regulation is to protect the consumers of South Carolina. The applicant does not demonstrate financial stability to the degree necessary for the Commission to allow a waiver of Reg. 103-607.

8. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B) (1) (Supp. 2010).

9. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B) (3) (Supp. 2010).

10. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B) (4) (Supp. 2010).

11. The Commission finds that services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B) (2) (Supp. 2010).

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<sup>1</sup> DISH is characterized as applicant's "eventual parent". Application, page 4.

<sup>2</sup> Applicant's organizational structure. Application, Exhibit A.

12. The Commission finds that the provision of local exchange service by the Company “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280(B)(5) (Supp. 2010).

13. Following execution of a Stipulation with intervenor South Carolina Telephone Coalition (“SCTC”), the SCTC withdrew its opposition to the Application.

### **CONCLUSIONS OF LAW**

1. The Commission concludes that the Company possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that the Company will participate in the support of universally available telephone service at affordable rates to the extent that the Company may be required to do so by the Commission.

3. The Commission concludes that the Company will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of the Company’s Application to provide intrastate telecommunications services within South Carolina will serve the public interest by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by the Company will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide intrastate local exchange and interexchange telecommunications services as requested by

the Company and as set forth in its Application and Mr. Alexander's testimony is in the best interests of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to the Company to provide intrastate local exchange telecommunications services and intrastate interexchange telecommunications services.

8. The Commission adopts a rate design for the Company for its residential interexchange services which include maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. *In Re: Application of GTE Sprint Communications Corporation, etc.*, Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

9. The Company shall not adjust its residential interexchange rates for end-users below the approved maximum level without notice to the Commission and to the public. The Company shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. *In Re: Application of GTE Sprint Communications, etc.*, Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and



will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp.2010).

10. The Commission concludes that the Company's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing.

If an investigation of a particular tariff filing is instituted within seven days of the filing date, the tariff filing will then be suspended until further Order of the Commission. If an investigation is instituted on a particular tariff filing, notice of the investigation will be provided to the person or entity making the tariff filing and to the Commission. The notice is timely if dated within seven days of the filing date.

11. The Commission concludes the Company's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing. An investigation of the tariff filing may be instituted within 30 days of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. If an investigation is instituted on a particular tariff filing, notice of the investigation will be provided to the person or entity making the tariff filing and to the Commission. The notice is timely if dated within thirty days of the filing date. Further, any such tariff filings will be subject to the same monitoring process as similarly situated local exchange carriers.

12. We conclude that the Company's request for waiver of 26 S.C. Code Ann. Regs. 103-610 should be granted, since strict compliance with the regulation potentially

causes undue hardship on the Company. We also grant exemption from the policies requiring the use of USOA.

13. In addition, we grant the Company waiver of 26 S.C. Code Ann. Regs. 103-607, Bonds or Other Security Mechanisms, and will not require the Company to post a bond or other security mechanism in connection with its provision of residential local exchange services.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to the Company to provide intrastate interexchange services as a facilities-based carrier and through the resale of services authorized for resale by tariffs of carriers approved by the Commission, as well as to provide facilities-based and resold local exchange telecommunications services within the State of South Carolina.

2. The Company's rate designs for its products shall conform to those designs described in Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, the Company shall file its revised tariff, if any, and an accompanying price list for any applicable rates within thirty (30) days of receipt of this Order using the Commission's e-filing system. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

4. The Company's service is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. The Company shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If the Company changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and termination of toll calls within the same LATA, the Company shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (47 C.F.R. § 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. The Company shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, the Company shall keep financial records on an intrastate basis for South Carolina to comply

with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1<sup>st</sup>**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31<sup>st</sup>** of each year. The proper form for filing gross receipts information can be found at the ORS website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov), and the appropriate form is entitled "Gross Receipts Form."

Each telecommunications company certified in South Carolina is required to file annually with the ORS the Intrastate Universal Service Fund ("USF") worksheet, which may be found on the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **July 1<sup>st</sup>** with the Commission and ORS.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests, and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. DISH shall file the names, addresses, and telephone numbers of these representatives

with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at [www.psc.sc.gov/forms.asp](http://www.psc.sc.gov/forms.asp); this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

10. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

11. At the hearing, the Company requested a waiver of 26 Code Ann. Regs. 103-610 (Supp. 2010), which requires that certain records be maintained in South Carolina. The Commission finds the Company’s requested waiver reasonable and understands the potential difficulty presented to the Company should the waiver not be granted. The Commission therefore grants the requested waiver. However, the Company shall make available its books and records at all reasonable times upon request by the Office of Regulatory Staff, and the Company shall promptly notify the Commission and ORS if the location of its books and records changes.

12. The Company also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts. The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, the Company maintains its book of accounts in accordance with Generally Accepted Accounting Principles. GAAP is used extensively by interexchange carriers and other competitive telecommunications carriers. Accordingly, the Company requests an

exemption from the USOA requirements. We grant the Company's request for the reasons stated above.

13. In addition, the Company requests a waiver of 26 S.C. Reg.103-607, Bonds or Other Security Mechanisms. We grant the Company's request for the reason stated above.

14. In the event that the Company offers or provides any service that would implicate Title 23, Chapter 47 of the South Carolina Code Annotated, the Company is required to comply with that Title and Chapter, which governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911" system or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, in the event the Company offers or provides the appropriate services, the Commission hereby instructs the Company to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning local telephone service in South Carolina. Accompanying this Order is a memorandum from the State 911 Office of the Office of Research & Statistics of the South Carolina Budget and Control Board. This memorandum provides information about contacting County 911 Coordinators. By this Order and prior to providing local telephone services in South Carolina, the Company shall contact the 911 coordinator in each county (and city where the city has its own 911

system) and shall provide information regarding the Company's operations as required by the 911 system.

15. The Stipulation is hereby approved.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

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John E. Howard, Chairman

ATTEST:

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David A. Wright, Vice Chairman

(SEAL)